

**SUBJECT: REPORT ON THE  
SPECIAL HANDLING UNIT**

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Attention: Senate of Canada  
Standing Senate Committee on Human Rights

The Special Handling Unit (hereinafter the SHU) is located in Ste-Anne-des-Plaines. It is also known as the super-max, and is the most restrictive detention centre in Canada. This institution was built in 1984 and is the only one of its kind in Canada. Its five wings and ten ranges house an exclusively male population that is mainly between the ages of 18 and 35. It has a capacity of 90 individuals, but currently has about 30 inmates. Two wings are reserved for the protection population, two for the general population and one for segregation. There are usually about six individuals per range.

The SHU is a last resort that is intended for situations where CSC believes that an individual represents a risk that cannot be managed in a regular maximum security institution. Logically, “last resort” would suggest that placement in the SHU is an exceptional measure that should come to an end when it is determined that the risk can once again be managed in another institution. Our experience has shown that the SHU actually becomes a permanent residence for many people, despite all indications that they could return to a regular institution.

The very existence of such an institution is problematic both legally and on a human level. Inmates are held in the SHU for an indefinite period, and the conditions of detention are inhuman and degrading. It should be remembered that the mandate of the Correctional Service is to promote reintegration through the provision of programs.<sup>1</sup> Not only is the notion of social reintegration completely discarded when it comes to the SHU, but the lack of clear criteria for transferring out, as well as the conditions of detention, constitute violations of the most fundamental rights protected by the Canadian Charter.

Commissioner’s Directive 708 (hereinafter CD-708) governs the operations of the SHU, and establishes the criteria for transferring individuals there. Once transfer and admission to the SHU have been authorized, it is impossible to know how long this exceptional measure will last. Some inmates will spend a few months, others a few years, and in some cases, detention has lasted more than 10 or even 20 years. Indeed, one of the people we currently represent has been held in the SHU since 1999. Two other clients, who were recently transferred out of the SHU, were there for 25 and 17 years. The criteria for returning to a regular institution are at the very least imprecise and subjective, and the decision-making process is blatantly arbitrary. We will come back to this later.

**Criteria for admission to the SHU**

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<sup>1</sup> *Corrections and Conditional Release Act*, section 3.

It is interesting to note that the criteria for transfer to the SHU have been amended over time. The most recent amendment to these criteria was in January 2017. The admission criteria in place prior to this last amendment were more restrictive and precise:

*“An inmate will be considered for transfer to the SHU for assessment if the inmate:*

- a. causes or commits or is strongly suspected of having committed an act of violence, has made serious threats or otherwise demonstrated a persistent propensity for serious violence such that transfer to the SHU is the only reasonable alternative;*
- b. causes or commits an act that results in serious injury or death;*
- c. is convicted of any terrorist offence where the Custody Rating Scale is maximum and CSIS determines that the inmate meets the criteria for placement in the SHU for assessment purposes. Depending on the situation, the inmate may be transferred directly from a provincial institution to the SHU.” [Translation]*

Section 21 of CD-708 now sets out general criteria allowing for a broader interpretation of the situations giving rise to transfer to the SHU. The current criteria are as follows:

*“An inmate will be considered for transfer to the SHU if:*

- a. there are reasonable grounds to believe that there is a risk to the public, staff or inmates and it has been determined that they cannot be safely managed at any other maximum security institutions or a Treatment Centre such that a transfer to the SHU is the only reasonable alternative, or*
- b. they are identified as a radicalized offender and it has been determined that they cannot be safely managed at any other maximum security institutions or a Treatment Centre such that a transfer to the SHU is the only reasonable alternative.”*

There are therefore two scenarios leading to transfer to the SHU. The first involves inmates who have acted in such a way that they represent a risk that can no longer be safely managed in a maximum security institution. CSC then determines that the SHU is the only reasonable solution for containing this risk. Despite the unequivocal wording of section 21, one individual we represent was recently transferred to the SHU from a medium security institution, even though a maximum security institution had accepted his transfer. At least two other clients were held in the SHU for more than six years despite the fact that they were classified as medium security for the entire period, beginning on the day of their transfer. Finally, one of our clients was recently transferred directly from a minimum security penitentiary to the SHU. This not only seems incongruous, but is also in direct contravention of the Act.

Under the second scenario, radicalized inmates will be transferred if CSC believes they cannot and should not be allowed to mix with other inmates for fear of radicalization. Indeed, it is not uncommon for persons accused of terrorist acts to begin their federal sentences in the SHU. Section 22 of CD-708 provides that inmates being held in preventive detention may be transferred from a provincial institution. In other words, an accused who has been incarcerated among the general population throughout his legal proceedings, which may take several years,

without any special administrative measures being adopted and without any fear of radicalization being raised, will be transferred to the SHU upon conviction. This transfer is motivated by a fear that the inmate may radicalize federal prisoners, despite the fact that his behaviour in pre-trial detention does not justify such a decision. One of the people we represent stayed in the SHU for 18 months at the beginning of his federal sentence, after spending four years in pre-trial detention. In this particular case, transfer to and detention in the SHU was authorized despite a psychological assessment indicating a low risk of recidivism and a rejection of the use of violence to achieve his ends.

### **Daily routine**

The daily routine in the Special Handling Unit is particularly strict and has long resembled that of segregation.

Prisoners spend 21 hours a day in a cell (alternating schedule: 1 day, 21.5 hours; the next, 20.5). These times were changed in response to numerous lawsuits, including regarding the isolation, and previously fluctuated between 22 and 23 hours. It should also be noted that even in the SHU, inmates may be placed in segregation. The conditions specific to segregation then apply.

Prisoners are allowed to leave their cells twice a day as follows: one day from 1:30 to 3:20 p.m., and from 6:30 to 8:20 p.m.; and the next day from 9:30 to 11:20 a.m. and from 9:00 to 10:20 p.m. Time outside the cells is usually spent in a small common room in small groups (usually a maximum of six). These are the only times they have to socialize, contact their families and perform personal grooming. They also have access to the outdoor courtyard for one hour in the evening. However, they must decide as a group whether they want to go outside or stay in the common room, which means that if only one of them wants to go outside, he will not be able to. In addition, the times for access to the courtyard are such that in winter, inmates can never go outside during daylight hours. It is also important to point out that the courtyards are very small and are surrounded by a high wall. The view is limited to the sky.

Inmates at the SHU have no direct human contact, except among themselves in the common room. Their hands are cuffed behind their backs any time they move about, and they are escorted by two guards. The handcuffs are passed through the trapdoor through which food is given to them. All their visits, including visits with lawyers and meetings with CSC staff (parole officer, psychologist, etc.), are conducted through glass or wire mesh. They do not have access to private family visits. This considerably reduces the possibility of maintaining links with the community. It should also be noted that, since there is only one SHU in Canada, the majority of the people who are there come from outside Quebec and are thus all the more isolated from their families.

The climate in this institution is one of constant tension. The vast majority of our clients are armed with shivs and report having to remain constantly on the alert in order to survive. Incompatible prisoners often find themselves in the same range, which leads to fights, and often to permanent injuries. For example, one of our clients was recently put in a range with an inmate who had put a contract out on him when they were both incarcerated in western Canada. Our client had been removed from the general population of that prison due to concerns for his safety. He was then attacked by this other individual when he was placed in his range at the

SHU. CSC acknowledged that it was aware of this information, but denies any fault since, as is commonly the case, these individuals had not been officially registered as incompatible by CSC.

Relations with the guards are also extremely tense. Many of our clients report being intimidated by the officers. It is common practice for the latter not to wear their name tag in order to avoid being identified.<sup>2</sup> People of Aboriginal origin report being commonly called “savages” and “dirty Indians.” Some inmates report being victims of sexual acts during searches, including having their genitals touched and having guards rub their bodies against them. Such behaviour occurs in front of other guards, who laugh and make comments, which increases the humiliation for our clients. Others have told us about the power being cut off in their cells for one to three days following disputes with officers. Several also report excessive and disproportionate use of inflammatory agents, contrary to Commissioner’s Directive 567-4. At least two clients also reported that their cells were not decontaminated for several days following the use of inflammatory agents. One client reported that he was forced to urinate in his sink and defecate in a plastic bag for several days after officers refused to provide him with a plunger to unclog his toilet.

Our clients report that when they file a complaint, they are subject to reprisals from the guards. Among other things, they report not being allowed out of their cell for their shower and phone time, threats, being placed in a punishment cell<sup>3</sup> with the light left on 24 hours a day, and intimidation (physical and verbal abuse).

Because of this strict and stressful environment, many individuals prefer to spend all their time in their cells, and report that they have lost all hope of ever getting out of the SHU. All those who have made it out report significant trauma, including difficulty in dealing with other people, difficulty sleeping, increased stress when they find themselves in the general population, etc.

### **Access to programs**

There are few programs available at the SHU. Parole officers do not conduct any criminological follow-up. More than 20 people tell us that they meet with their parole officer only to be informed of his or her recommendation with regard to their remaining in the SHU and for technicalities related to their sentence (e.g., responding to a complaint), but very rarely in order to discuss their criminality or to work on their risk factors for offending. There is no psychological follow-up available, either. One of our clients who wanted to have a psychological follow-up was informed by the psychologist in writing that this type of work had to be done in a clinical context, which does not exist at the SHU. Several people expressed their despair and frustration at the lack of follow-up with their Case Management Team, which nevertheless provides an opinion on their progress and a recommendation as to their remaining in the SHU.

The multi-target program is very rarely available. For example, at least three of our clients who are sexual offenders completed the sexual offender program in 2014. They subsequently

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<sup>2</sup> This practice directly contravenes sections 21 and 29 of Commissioner’s Directive 351-1.

<sup>3</sup> Inmates placed in punishment cells are subject to the same conditions as those in segregation, but without CSC being required to justify such placement or to follow the legal process for placement in segregation.

remained in the SHU for four more years without access to any programming. They were nevertheless asked to work on their risk factors so that their transfer to a regular maximum security penitentiary could be authorized. These clients repeatedly asked to do the maintenance program, but were told that such a program would not be beneficial in an environment as strict as the SHU.

In 2015, CSC also considered Lupron pharmacological treatment to be a program. This treatment was recommended on a massive scale to treat sexual offenders' deviant sexual behaviour despite the fact that the medication is not officially approved for treatment of paraphilia (sexual deviances or anomalies). Lupron is in fact prescribed to treat a number of serious medical conditions, including prostate cancer for men. Its side effects are numerous, including an increase in estrogen, larger mammary glands, weight gain, and decreased self-confidence. For at least three years, however, CSC attempted to impose this treatment on sex offenders as a condition of their transfer from the SHU, despite the fact that experts were unable to assess the chances of success of this treatment and its impact on the risk of recidivism. The filing of an application for declaratory relief in the Federal Court and the production of a second opinion was required in order to break the deadlock.

It is also important to note that, as in all other penitentiaries, there are no programs for radicalized people. It is therefore impossible for them to work on their risk factors in order to be quickly transferred out of the SHU. This is all the more worrying as contacts with others are extremely limited for fear that they will be radicalized in turn.

The only conclusion is that clinical intervention is impossible in the SHU, which in no way prepares prisoners for their social reintegration. In his 2002–2003 report, the Correctional Investigator pointed out the inability of the SHU to provide programming suited to the needs of its residents.<sup>4</sup> That observation is still valid today.

### **Aboriginal programs**

The SHU has very limited services for Aboriginal people. They do not have access to any Aboriginal programs, ceremonies, sweat lodges, ceremonies to mark the seasons, sharing circles, teepees, etc., as is generally the case in regular maximum security penitentiaries. In fact, the Aboriginal program is limited to a few sporadic meetings with the elder (usually no more than once a month) that completely lack confidentiality and often take place at the cell door.

At least nine clients reported that they were not entitled to their traditional medicine kits, were not allowed to smog and were denied tobacco. They also indicate that, when they are in possession of sacred objects, the guards throw them in the toilet or confiscate them. At least one of our clients reports not being allowed to hold a pipe ceremony following the death of a family member.

### **Mental health problems**

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<sup>4</sup> Annual Report of the Office of the Correctional Investigator 2002-2003, p. 27.

Despite CSC's obligation to assess an inmate's mental health before transferring him to the SHU, there are many people incarcerated there who have been diagnosed with mental health disorders. For example, one of our clients has Asperger's syndrome, a generalized anxiety disorder and attention deficit disorder. Another, who has been in the SHU for 20 years, suffers from schizophrenia, a general personality disorder and cognitive limitations that have an impact on his capacity for introspection and self-criticism (note that he was held for a long time in a psychiatric hospital).

In 2009–2010, the Correctional Investigator observed that an increasing number of offenders suffering from mental illness were being held at the SHU, despite the fact that this environment is not conducive to the clinical treatment of mental illness. He also noted that “[w]hile the SHU has the security infrastructure to control risk, mentally disordered inmates do not receive the services, treatment or programming to treat their underlying psychiatric condition. The SHU is meant to be the facility of absolute last resort—it is not meant to warehouse acutely mentally ill offenders who seemingly cannot be managed elsewhere in the system. It certainly is not the least restrictive option.”<sup>5</sup>

Given the conditions of detention at the SHU, it is clear that under no circumstances should these individuals end up in that institution, and that alternative measures should be considered.

### **Criteria for release from the SHU**

CD-708 is silent as to the criteria for release from the SHU. There are in fact no objective criteria for determining when or if a person can now be safely managed in a regular maximum security facility. CD-708 does not provide any release criteria, and the administrative process is long, redundant and for many prisoners in the SHU, completely illusory.

The National Advisory Committee (hereinafter the NAC) must review the file of each inmate at the SHU at least once every four months, at which time the inmate is given an opportunity to submit comments to the NAC members.<sup>6</sup> Prior to the Committee review, the inmate will receive an Assessment for Decision presenting the Case Management Team's recommendation for maintenance in the SHU. After consulting several Assessments for Decision for various inmates, it is clear that the same comments, as well as the reasons for maintenance in the SHU, are repeated from one document to another. The final decision rests with the Senior Deputy Commissioner, who never meets with the inmates, and who makes decisions based on the comments received from the NAC members.

We have found through our constant attendance of meetings before the NAC that the questions asked tend to distort the established administrative process. While the person concerned is asked to share his comments, it is not uncommon for him to have to answer questions that place on him the burden of proving that there is no longer any reason to remain in the SHU. These questions are often expressed as follows: “What has changed in the last four months?” “What can you do

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<sup>5</sup> Annual Report of the Office of the Correctional Investigator 2009-2010, p. 21

<sup>6</sup> CD-708, s. 50.

to change our minds about your placement in the SHU?” In fact, it is not uncommon for the discussion between the inmate and the NAC to revolve around changes and progress in behaviour and risk factors, without addressing the original reasons for transfer to the SHU. The questions about change and progress are patently unrealistic given that these people have no access to correctional programs. This is all the more absurd because nothing can have changed in the last four months, given their very limited interactions and the long hours spent in their cells.

It is not uncommon for inmates at the SHU to simply refuse to attend the NAC meeting due to a strong bias towards a process they consider to be useless.

Moreover, as mentioned above, it is difficult to know what is really expected of people held in the SHU. Often, the Deputy Commissioner will repeat the comments found in the Assessment for Decision, noting, in particular, the inmate’s satisfactory and consistent behaviour, the frequency of his follow-ups with institutional professionals, or whether or not there have been any offence or observation reports. The decision keeping the person in the SHU will then encourage him to maintain his good behaviour, see his parole officer on a regular basis, not be the subject of disciplinary reports, etc.

It should also be borne in mind that inmates at the SHU do not have access to the correctional programs that are available in other penitentiaries. Add to that the fact that a majority of them have reported to us that they do not see their parole officer regularly, and we must conclude that they are left to their own devices, and that apart from their behaving satisfactorily during the few hours spent outside their cell, the determination that the risk has become manageable again is arbitrary. For example, at least four people we represent, who were recently transferred out of the SHU after many years of compliant behaviour without incident, did not demonstrate any significant change between the most recent decision to maintain them at the SHU and the meeting with the NAC that approved their transfer. Thus, within a few months, it was decided that they could now be incarcerated in a regular institution, despite the absence of new information in the file.

The arbitrary nature of the grounds for transfer out of the SHU is even more obvious in the case of inmates who have committed sexual offences, because of the intense pressure on them to accept pharmacological treatment in order to leave the SHU, when such treatment was never previously discussed.

## **Conclusion**

As far back as the early 2000s, the Correctional Investigator questioned the very existence of this institution, noting the problems surrounding the SHU and the detrimental effects of its conditions of confinement on the people incarcerated there.<sup>7</sup> The Special Handling Unit system has been the subject of several judicial proceedings, both in civil courts and the Federal Court.<sup>8</sup> We believe

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<sup>7</sup> Annual Report of the Office of the Correctional Investigator 2000-2001.

<sup>8</sup> See, for example:

File 500-06-000917-183 Derrick Campeau v. AGC: Class action regarding living conditions at the SHU;

that there is no justification for this institution, that it violates both the fundamental rights of individuals protected by the Canadian Charter and international standards, and that it is inconceivable that such an institution exist in a law-abiding state like Canada.

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File 500-1708-08-25-138 Lance Regan v. AGC: Civil action against the AGC related to the treatment the applicant suffered during his time at the SHU;

File T-1644-16 Ducap and Lewis v. AGC: Application for declaratory relief from the Court to declare illegal the CSC's request that sexual offenders undergo pharmacological treatment to control their deviant sexual urges;

File T-439-18 Benjamin et al v. AGC: Application for declaratory relief to have CD-708 declared illegal with regard to the procedure for leaving the SHU;

File 500-36-009226-195 Snooks v. AGC: Habeas corpus seeking to have the applicant's detention at the SHU declared illegal since there was an alternative to his placement there and his Aboriginal status was not considered.